

## *The Miccosukee Million*

*By: Brandon Bains*

Many can relate to the frustrating feeling of being involved in a lawsuit where allegations are suspect, evidence for the other side is tenuous, and opposing counsel is unreasonable and likely is giving bad advice. South Florida unfortunately has a reputation for being a place where this type of litigation is more frequent than the norm.

Last week, however, Miami-based U.S. District Judge Marcia Cooke course-corrected this trend a bit, awarding sanctions of more than \$1 million to three Miami lawyers who had been sued for malpractice and fraud by their former client, the Miccosukee tribe. The Miccosukee are an off-shoot of the Seminole tribe, and are also known in South Florida for running a casino on the edge of the Everglades.

In addition to penalizing the Miccosukee, Judge Cooke awarded sanctions against the tribe's counsel, noting that akin to the adage of "a man who represents himself has a fool for a client," counsel for the tribe failed to remain objective in guiding the claims of his client.

### Miccosukee Resort & Gaming: Miami, Florida



Arizona • Arkansas  
California • Colorado  
Florida • Nevada • New  
Mexico • Oklahoma  
Texas

**Dallas**

901 Main Street, Suite 600  
Dallas, Texas 75202  
(214) 722-7160

**Phoenix**

76 East Mitchell Drive  
Phoenix, Arizona 85012  
(602) 428-7339

**Miami**

2937 SW 27th Avenue  
Suite 106  
Miami, FL 33133  
(305) 397-0630

info@l-llp.com

---

[www.l-llp.com](http://www.l-llp.com)

---

To "Go Green", our firm uses recy-  
clable paper or ceramic cups and  
no longer uses Styrofoam cups. In  
addition, we have adopted a  
less-paper office environment.

We hope that these changes make  
big differences in the future.

*Well done is better than well said.*

- Benjamin Franklin



Judge Cooke started her lengthy 27-page opinion by quoting Gandhi – “an eye for eye will only make the whole world blind” – and ended by referring counsel to the U.S. Attorney’s office for inquiry into whether there should be criminal charges. Clearly, this matter was of great importance and seriousness to Judge Cooke.

While this case does not necessarily have universal application (as sanctions are certainly the exception and not the rule), it does demonstrate three key points:

1. If at all possible, you want to litigate in federal court. Our practice is to always remove cases to federal court, as well as explore whether there has been fraudulent joinder by the plaintiff to try and destroy diversity. In a case we recently handled, fraudulent joinder was ultimately the biggest issue, as once the case moved to federal court, the position of the opposition was altered significantly.
2. An early and comprehensive investigation is critical. What doomed counsel for the Miccosukee was his failure to properly investigate the claims of his client before filing suit. Our approach is to overweight the initial investigation when possible. This can have the positive result of an early resolution after a demand, but before suit.
3. A key to the victory for the defendants in the Miccosukee matter was the effectiveness of their counsel at wading through all of the muck, distilling a cogent argument for the judge, and then being the guide as to the appropriate consequence for what took place in that case. Through our experience in the Valley of South Texas, as well as here in South Florida, we have seen too often some of the tactics presented in the Miccosukee case. While sanctions are something to be taken very seriously, the right team of client, consultant, and counsel can help navigate these choppy waters successfully.

*Brandon Bains is the managing partner of Langley LLP's Miami office. Brandon focuses his practice in construction/surety, property insurance, catastrophic losses, complex bankruptcies, and fidelity.*